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No. 98-606

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

CHARLES B. TAYLOR,

Petitioner,

vs.

ANNE ROONEY, in her capacity as
Acting Principal, South Middle School,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

REPLY BRIEF FOR PETITIONER

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ARGUMENT

I. INTRODUCTION

Petitioner relies primarily upon the arguments set forth in the original petition as the basis for this Court granting the Petition for Certiorari. However, there are additional issues raised by Respondent in her Brief in Opposition to which Petitioner is compelled to respond.

Respondent incorrectly concludes that there is no precedent of this Court upon which Petitioner can rely for the proposition that tort principles of causation apply to civil rights cases brought pursuant to 42 U.S.C. § 1983. Respondent further misplaces her reliance on *Exxon Company U.S.A. v. Sofec, Inc.*, 517 U.S. 830, 116 S. Ct. 1813 (1996) for the proposition that there is a per se rule that intervening or superseding acts relieve her of liability.

Respondent's reliance on *Arnold v. International Business Machines Corporation*, 637 F.2d 1350 (9th Cir. 1981) is also incorrect. In citing *Arnold, supra*, Respondent seeks to improperly engage this Court in a comparative factual analysis as to the degree of involvement a defendant must have in an investigation in order for that defendant to be deemed sufficiently in control of the investigation which leads to the ultimate action against the plaintiff. The Ninth Circuit's "lack of control doctrine" in *Arnold, supra*, is not an automatic basis for relieving a defendant of foreseeable consequences which are set in motion by their actions. *Warner v. Orange County Department of Probation*, 115 F.3d 1068, 1071 (2d Cir. 1997).

Respondent also engages in a detailed recitation of a misstatement of facts as they relate to her involvement at every critical stage of the investigations and deliberations which led to the deprivation of Petitioner's constitutional rights. Both the Second Circuit and the Respondent in her Brief in Opposition ("Opposition") mischaracterize the extent of Respondent's involvement in the process which culminated in Petitioner being suspended for one year without pay for allegedly violating the Brentwood Union Free School District's corporal punishment policy, while similarly situated white teachers were not subjected to the same treatment by Respondent.

Respondent's attempt to have this Court view her role as only that of reporting Petitioner's "altercation with Alex" pursuant to New York State Commissioner of Education Regulations at 8 NYCCR 100.2(1)(3)(ii) must also be rejected. The record is replete with testimony and documentary evidence establishing that Respondent took a far more active role than just merely reporting an incident. Respondent set the investigation in motion and remained involved in the investigation with Fasullo and was one of the major witnesses against Petitioner at his disciplinary hearing. (T. 539-540, T. 1648-1650, E-236).

The decision below raises several major doctrinal questions of law as to the applicability of the principle of causation in the context of a civil rights case brought pursuant to Section 1983 and the inapplicability of the expansion of *Jeffries v. Harleston*, 53 F.3d 9 (2d Cir. 1995), a strict First Amendment case, to Section 1983 actions in which there are allegations of racial discrimination. The Second Circuit has, as a matter of law, crafted a "pseudo-*Jeffries*" rule which departs in clear and critical respects from this Court's application of causation to Section 1983 cases. *See Imbler v. Pachtman*, 424 U.S. 409, 96 S. Ct. 984 (1976) and *Martinez v. California*, 444 U.S. 277, 100 S. Ct. 553 (1980).

The Second Circuit's determination that "[t]he causation requirement of 1983 is a matter of statutory interpretation rather than of common tort law", citing *City of Springfield v. Kibbe*, 480 U.S. 257, 269 (1987) (per curiam) is in derogation of this Court's long-standing recognition of the principle that issues of proximate cause and superseding causes are matters for the finder of fact to decide. *See Exxon Company U.S.A. v. Sofec, Inc., supra* at 1819, citing *Milwaukee and St. Paul Railway Company v. Kellogg*, 94 U.S. 469 (1877).

The petition for certiorari should be granted to prevent the adoption of a blanket rule which removes the issue of causation from the purview of the trier of fact and which determines as a matter of law that all intervening and superseding acts break the causal chain of connection, thereby relieving a defendant of any liability for the foreseeable consequences which flow from his actions.

II. THE SECOND CIRCUIT MISAPPLIED THE DOCTRINE OF PROXIMATE CAUSE AS ADOPTED BY THIS COURT AND THE SEVERAL CIRCUIT COURTS IN SECTION 1983 CASES.

In her opposition, Respondent asserts that Petitioner can not rely on any precedent of this Court which supports the application of tort law principles of causation in Section 1983 civil rights cases. Opposition, p. 12. To the contrary, this Court in *Martinez v. California*, 444 U.S. 277, 100 S. Ct. 553 (1980) acknowledges that a Section 1983 claim is a species of tort liability, citing *Imbler v. Pachtman*, 424 U.S. 409, 417, 96 S. Ct. 984, 988 (1976).

Likewise, for the reasons previously stated in the Petition, this Court in *Malley v. Briggs*, 475 U.S. 335, 106 S. Ct. 1092 (1986) clearly acknowledged that principles of tort law causation are relevant to causation issues raised in the context of civil rights violations pursuant to Section 1983 actions.

Several Circuits, including the Second Circuit, have acknowledged that the Supreme Court recognizes and applies principles of tort law causation to civil rights actions brought under Section 1983. In *Springer v. Seaman*, 821 F.2d 871 (1st Cir. 1987), the court applied tort law principles of causation to determine that the defendants were responsible for instigating the investigation of plaintiff and that the investigation was a substantial or motivating factor in the Postal Service's decision to terminate Springer's contract. *Id.* at 879. Similarly here, Rooney was responsible for the investigation of Petitioner. She, as principal, made the determination as to whether an incident should be reported to Central Administration or resolved at the building level (T-596); Rooney also discussed the matter of possible disciplinary charges with Petitioner (T-539); Former Superintendent Mauro also testified that Rooney met with Central Administration to discuss the incidents involving Taylor (T-539-540).

Respondent is grasping at straws when she tries to distinguish *Springer* from the instant case on procedural grounds. The fact that *Springer* was decided after the granting of a motion for summary judgment by the district court in no way diminishes the import of the applicability of the First Circuit's determination that where there were

material issues of fact as to whether the Postal Service's investigation constituted a superseding cause, summary judgment was inappropriate. Inherent in the First Circuit's ruling is an acknowledgment of the fact that issues of proximate cause are applicable in civil rights actions brought pursuant to Section 1983 and that further these are questions of fact to be determined by the trier of fact, not by the court as a matter of law.

Respondent is further misguided in her conclusion that *Springer* is inapplicable because of the degree of involvement of the respective two defendants during the subsequent investigation. Opposition, p. 13. The application of *Springer* does not turn on the mirroring of fact patterns, but rather on the application of the legal analysis of causation to the respective facts. In both cases, there was evidence that the respective defendants continued to be active in the subsequent investigation. In the case of Respondent, this is borne out by the testimony of Rooney herself, by Fasullo, by Malossi, the union representative; by Lloyd the assistant principal; and by Mauro former Superintendent of Schools. (T. 133, 134, 139, 539-540, 596, 1853, 1854). Another First Circuit case where the doctrine of tort law causation is applied to a 1983 case is *Scott-Harris v. City of Fall River*, 134 F.3d 427 (1st Cir. 1997). Here the court acknowledged and cited as accepted law, this Court's determination in *Monroe v. Pape*, 365 U.S. 167, 187, 81 S. Ct. 473, 484 (1961) that Section 1983 actions are to be considered against the background of traditional tort principles. *Scott-Harris, supra* at 441. In applying that analysis, the First Circuit acknowledged that in tort law, determinations relating to causation are customarily "questions of fact for the jury, to be solved by the exercise of good common sense in the consideration of the evidence of each particular case.", citing *Springer v. Seaman*, 821 F.2d 871, 876

Just as the First Circuit concluded that the jury could have reasonably concluded that the defendant's overall conduct was a substantial factor in depriving the plaintiff of her constitutional rights, so could the jury in the instant case have reasonably concluded that Rooney's overall involvement in the investigation, the interviewing of students, the meetings with central administration, the transmittal of memos to her superiors concerning Petitioner, and her involvement

as a major witness at the trial, all pointed to her being the proximate cause of Petitioner's injury. Even as the First Circuit acknowledges, proof of involvement need not be "robust" as long as it suffices in the context of the record as a whole to render the issue of causation susceptible to differing evaluative determinations. *Scott-Harris, supra* at 442. The court went on to conclude that because the jury reasonably could have adopted one such view of the evidence and concluded that the defendant made a successful effort to have the plaintiff ousted, the jury's liability finding must stand. *Id.* at 442.

Likewise, in the instant case, the jury was properly charged as follows:

> . . . Third and final element of plaintiff's 1983 equal protection claim is that defendants' actions were a proximate cause of the damages and injury to plaintiff . . . There must be a direct causal link between the defendants' violation and the damages to plaintiff.

(T. 2354). There was no objection to these instructions and they are the law of the case. *Scott-Harris, supra* at 442, citing *Moore v. Murphy*, 47 F.3d 8, 11 (1st Cir. 1995). The Second Circuit has also acknowledged that tort law principles of causation are applicable in civil rights cases brought under Section 1983. In *Warner v. Orange County Dep't. of Probation*, 115 F.3d 1068, 1071 (2d Cir. 1997), the court, citing *Malley v. Briggs*, 475 U.S. 335, 344 n.7, 106 S. Ct. 1092, 1098 n.7 (1986) and quoting *Monroe, supra*, 365 U.S. at 187, 81 S. Ct. at 484, the Second Circuit recognized that tort defendants, including those sued under 1983, are "responsible for the natural consequences of [their] actions." The Second Circuit went on to acknowledge that an actor may be liable for "those consequences attributable to reasonably foreseeable intervening forces, including the acts of third parties", citing *Gutierrez-Rodriguez v. Cartagena*, 882 F.2d 553, 561 (1st Cir. 1989). Respondent merely states at page 16 of the Opposition that foreseeability is not enough where there is a superseding cause of an independent investigation. However, the jury reasonably determined that the Fasullo investigation did not break the causal connection between Rooney's actions and the foreseeable consequences that Petitioner would be charged, especially when Rooney had warned Petitioner of possible charges. (T. 539).

III. RESPONDENT'S RELIANCE ON *EXXON, SUPRA* AND *ARNOLD v. INTERNATIONAL BUSINESS MACHINES CORPORATION*, 637 F.2d 1350 (9th Cir. 1981) IS MISPLACED.

Respondent erroneously refers to the decision in *Exxon Company U.S.A., supra*, for the proposition that intervening and superseding acts will relieve a tort defendant of liability even for admittedly wrong conduct. *Id.* at 1818. However, *Exxon* is of little if any support to Respondent's position since it is an opinion wherein this Court has opined that principles of tort law apply in admiralty cases.

Likewise, Respondent cannot rely upon *Arnold, supra*. In that case, the Ninth Circuit emphasized that IBM was merely a good faith complaining party and that it had not considered the plaintiff a suspect before bringing him to the authorities. *Id.* at 1356-57. It is noteworthy that the court in *Arnold, supra*, stated specifically that

> [i]f Arnold could point to any fact that would tend to show that defendants had some control or power over the Task Force and that the defendants directed the Task Force to take action against Arnold there would certainly be a dispute of material fact on the issue of proximate cause sufficient to reverse the summary judgement.

Id. at 1356-57. In the instant case, the record is replete with examples of how Rooney was immersed in the investigation, deliberation and handling of Petitioner's case which led to his one year suspension. Mauro even testified that he relied on Rooney's reports in deciding whether to prefer charges against Petitioner. (T. 491-492).

It is also noteworthy that Respondent told Petitioner before the charges were preferred that she would consider him suspect anytime one of his students sustained an injury. (E. 228). Thus, there was an ample basis for the jury to find Rooney liable.

IV. BOTH THE SECOND CIRCUIT AND ROONEY MISSTATE THE SCOPE AND NATURE OF ROONEY'S ACTIONS AS TO NARROWLY DEFINE HER ROLE IN THE ACTIONS WHICH LED TO THE DEPRIVATION OF PETITIONER'S CONSTITUTIONAL RIGHTS.

Rooney conveniently defines the extent of her involvement for purposes of causation analysis as reporting Petitioner's "altercation with Alex", Opposition, p. 12, and that she was mandated to do this pursuant to Commissioner of Education requirements, 8 NYCCR 100.2(1)(3)(ii).

Respondent deliberately stops short in detailing her involvement in the actions which led to the violation of Petitioner's Equal Protection Rights. Rooney's involvement in this case continued after the reporting of the incident. She met with the union representative, which clearly was not required by any regulation. (T. 134, 138-139). She had the Assistant Principal take pictures of Alex's neck to be used later, which was not required by any Commissioner of Education regulation. (T. 1687). These pictures were introduced at Petitioner's disciplinary hearing. Assistant Principal Lloyd testified at the hearing that this was the first time he had taken pictures of a student. (T. 1713). She rounded up the student witnesses for Fasullo to speak to in his investigation, and gave Fasullo student statements, which was not a requirement of the Commissioner's Regulations. (T. 1854). She attended several planning meetings with Central Administration, which was unusual and not a requirement. (T. 539-540). Mauro the Superintendent of Schools testified that he relied heavily upon Rooney's recommendation and reports in reaching a decision to prefer charges against Petitioner. (T. 491-492).

Thus, it is a misrepresentation for Rooney to state her only involvement as reporting the incident and using that misrepresentation to leap to the insupportable conclusion that she was not the proximate cause of Petitioner's injury.

V. THE JURY PROPERLY DETERMINED THAT THERE WERE NO INTERVENING ACTS WHICH OPERATED TO RELIEVE ROONEY OF LIABILITY.

This Court's decision in *Milwaukee and St. Paul Railway Company v. Kellogg*, 94 U.S. 469 (1877) acknowledged that the primary cause may be the proximate cause even though it may operate through successive instruments, as an article at the end of a chain may be removed by a force applied to the other end, that force being the proximate cause of the movement. This Court went on to pose the relevant question as: Was there an unbroken connection between the wrongful act and the injury, a continuous operation? Did the facts constitute a continuous succession of events, so linked together as to make a natural whole, or was there some new independent cause intervening between the wrong and the injury? *Id.* at 475.

Thus, issues of proximate causation and superseding cause involve the application of fact to law and is best left to the factfinder. *Exxon, supra* at 1819. The jury properly determined that in light of Rooney's continued involvement there was no break in the causal chain.

VI. THE SECOND CIRCUIT AND RESPONDENT IMPROPERLY ASSERT THAT CAUSATION IS A MATTER OF LAW.

The issue of causation was properly placed before the jury and the Second Circuit acted improperly when it determined as a matter of law, that Rooney could not be the proximate cause. In reaching this insupportable conclusion, the Second Circuit ignored all the precedent of this Court which recognizes that issues of proximate cause and superseding cause as best determined by the trier of fact. *Exxon, supra* at 1818.

Also, as aptly noted in *Springer, supra* at 876, "not only ordinary fact questions, but also evaluative applications of legal standards (such as the legal concept of foreseeability) to the facts" are proper jury questions. Even Respondent questions the Second Circuit's reliance on *City of Springfield v. Kibbe*, 480 U.S. 257, 269, 107 S. Ct. 1114, 1120-21 (1987) per curiam.

The Second Circuit stated *Kibbe* for the proposition that "causation requirement of 1983 is a matter of statutory interpretation rather than of common tort law." There is no support for this conclusion in this court's per curiam decision.

This Court has spoken loudly and clearly that issues of causation are best left to the trier of fact. The Second Circuit acted in derogation of this judicial principle when it ruled as a matter of law that no reasonable jury could find that Rooney was the proximate cause of Petitioner's constitutional harm.

VII. THERE WAS A MISAPPLICATION BY THE SECOND CIRCUIT OF THE *JEFFRIES* DECISION.

Respondent fails to respond to Petitioner's arguments that the Second Circuit incorrectly applied a per se rule that causation is a matter of law to be decided by the court. *Jeffries*, *supra*, was a First Amendment case, remanded to the Second Circuit for further determination in light of this Court's decision in *Waters v. Churchill*, 511 U.S. 661 (1994) and is not controlling in this case concerning issues of causation and proximate cause.

CONCLUSION

This case presents important questions which must be resolved in terms of causation issues in civil rights cases brought under Section 1983. The court below has misapplied and misconstrued this Court's rulings on this issue. The Second Circuit's decision is also inconsistent with the rulings of other circuit court's on this issue. By granting Taylor's petition for certiorari, this Court can correct the Second Circuit's decision on the issue of causation in Section 1983 cases. By granting this petition, this Court will also clarify the standard of review of a denial of a judgement as a matter of law.

Accordingly, Charles B. Taylor respectfully requests that his petition for a writ of certiorari be granted.

Respectfully submitted,

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